

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

LARRY MAJOR CLAY,)	CASE NO. 1:05 CV 957
)	
Plaintiff,)	JUDGE CHRISTOPHER A. BOYKO
)	
v.)	<u>MEMORANDUM OF OPINION</u>
)	<u>AND ORDER</u>
WILLIAM F. CHINNOCK, et al.,)	
)	
Defendants.)	

CHRISTOPHER A. BOYKO, J.:

On April 12, 2005, plaintiff pro se Larry Major Clay, an inmate at the Lake Erie Correctional Institution, filed this civil rights action against 10 defendants. Plaintiff also filed a request to proceed in forma pauperis on that date. For the reasons stated below, this action is dismissed without prejudice.

28 U.S.C. § 1915, which governs proceedings in forma pauperis, was amended by the Prison Litigation Reform Act of 1995, Pub. L. No. 104-40, § 1(a), 110 Stat. 1327 (1996). Among the changes to the statute is a provision which prevents a prisoner from bringing a civil action or appealing a judgment in a civil action in forma pauperis if, on

three or more prior occasions, the prisoner brought an action or appeal in a court of the United States that was dismissed on the grounds that it was frivolous, malicious or failed to state a claim upon which relief may be granted. 28 U.S.C. § 1915(g).

Clay has on at least three occasions filed a civil action failing to state a claim in this court.¹ See, Clay v. State of Ohio, No. 5:04 CV 2264; Clay v. Hoffer, No. 1:97 CV 2269; and Clay v. Hoffer, No. 5:95 CV 1241. Thus, as the complaint in the instant action does not contain allegations reasonably suggesting he is in imminent danger of serious physical injury, he may not proceed in forma pauperis. See Mitchell v. Tennessee, No. 03-5816, 2004 WL 193153 at *1 (6th Cir. Jan. 30, 2004).

Accordingly, this action is dismissed without prejudice. The court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal

¹ Failure to exhaust administrative remedies constitutes a failure to state a claim upon which relief can be granted. Baxter v. Rose, 305 F.3d 486, 489 (6th Cir. 2002).

from this decision could not be taken in good faith.

IT IS SO ORDERED.

DATE: MAY 25, 2005

/s/ Christopher A. Boyko
CHRISTOPHER A. BOYKO
UNITED STATES DISTRICT JUDGE
(Signed original on file)